

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 2:09-cr-00202

DENNIS MARCUM, JR.,

Defendant.

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Dennis Marcum, Jr.'s, Motion for Reconsideration of Sentence [Docket 26].

Defendant pled guilty on October 1, 2009, to conspiring to violate 18 U.S.C. §§ 511, 2313, and 2315, in violation of 18 U.S.C. § 371. Defendant appeared before the Court for sentencing on March 31, 2010. The Court considered his poor health, among the other relevant factors, and imposed a sentence of imprisonment of thirty months. This sentence was at the bottom end of the calculated guideline range.

Since the date of sentencing, Defendant's medical condition apparently has deteriorated. The Court has twice granted Defendant's requests to delay his self-report date so that he could continue his medical treatment. Defendant now requests a reduction of his sentence in light of his worsening medical situation.

The Court's authority to modify or reduce a sentence of imprisonment is limited to the situations provided for in 18 U.S.C. § 3582(c). Upon the motion of the Director of the Bureau of

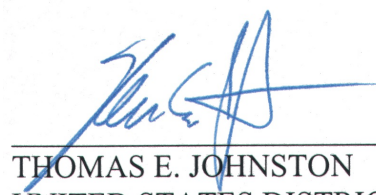
Prisons, the Court may modify or reduce a sentence for “extraordinary and compelling reasons” or if the Defendant has reached an advanced age and other conditions are satisfied. 18 U.S.C. § 3582(c)(1)(A). The authority to modify a sentence may be triggered by an amendment to a provision of the United States Sentencing Guidelines impacting the defendant’s sentence. 18 U.S.C. § 3582(c)(2). Lastly, the Court may modify or reduce a sentence if so permitted by Rule 35 of the Federal Rules of Criminal Procedure. 18 U.S.C. § 3582(c)(1)(B). Rule 35 permits the Court to correct or reduce a defendant’s sentence under two circumstances. Within fourteen days of sentencing, the Court may correct a sentence that was based on “arithmetical, technical or other clear error.” Fed. R. Cr. P. 35(a). The Court also may reduce a sentence upon a Government motion stating that a defendant had provided substantial assistance. *Id.* at 35(b).

Defendant’s motion satisfies none of the criteria under § 3582 necessary to invoke this Court’s authority to reduce or modify his sentence. Defendant’s deteriorating health is regrettable, but it does not provide grounds for this Court to reduce his sentence. *See United States v. Phillips*, 194 F. App’x 154, 155 (4th Cir. 2006). As the Court is without authority to grant the relief Defendant is requesting, the motion to reconsider the sentence of imprisonment [Docket 26] is **DENIED.**

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to Defendant and counsel, the United States Attorney, and the United States Probation Office.

ENTER: July 13, 2010

A handwritten signature in blue ink, appearing to read 'Th. Johnston', is written over a horizontal line.

THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE